*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

+ W.P.No.13221 OF 1999

% Dated 07-07-2006

M. Gopalakrishna.

.... Petitioner

Vs.

$ Divisional Security Commissioner, Railway Protection Force, S.C. Railway, Guntakal and two others.

.... Respondents

! Counsel for the Petitioner: Mr. J.M. Naidu

^ Counsel for the S.C. for Railways: Mr. G.S. Sanghi

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> HEAD NOTE:

? Cases referred

[1] AIR 1999 SC 1416
2 2001(4) ALD 535 (DB)
3 AIR 1999 SC 3367
4 AIR 1994 SC 215
5 1995(1) ALT 744
6 2002(3) ALT 422
7 Judgment in W.P.No. 6021 of 1999 dated 08.07.2005
8 Judgment in W.P. No. 20448 of 1997, dated 20.06.2000
9 Judgment in W.A.No. 1659 of 2000 dated 13.11.2002
10 2005(6) Supreme 612
11 2005(7) Supreme 111
12 2005(6) Supreme 183
13 2005(6) SCC 76
14 2006(2) Supreme 369
15 2006(1) Supreme 633
16 Judgment in W.P.No. 18217 of 2004 dated 05.11.2004
17 W.A.No. 952 of 1998 dated 03.02.2005
18 AIR 1963 SC 779

[19] AIR 1969 SC 966
[20] AIR 1996 SC 484
[21] 1997(7) SCC 463
[22] (2001) 2 SCC 386
[23] 2004(8) SCC 218
[24] (2006) 3 SCC 790
[25] (2005) 10 SCC 84
[26] (2006) 2 SCC 255
[27](2005) 12 SCC 182
[28](2006) 1 SCC 589
[29](2004) 7 SCC 574
[30]Judgment in W.P.29705 of 1999 dated 26.11.1999
[31]judgment in W.P.No.18660 of 1998 dated 2.11.2000

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 13221 OF 1999

ORDER:

Questioning the proceedings of the 1st respondent dated 20.01.1995, imposing on the petitioner the punishment of removal

from service, as confirmed in proceedings dated 16.04.1996 of the 2nd respondent and further confirmed in the revisional order dated 5/6-01.1999 of the 3rd respondent, the present writ petition is filed.

Facts, to the extent necessary, are that the petitioner was appointed as a Railway Protection Force (for short 'R.P.F') Constable on 26.08.1985. According to the petitioner, after completion of duty on 30.09.1994, and on coming to know that his wife was behaving abnormally, he went to his native place. Petitioner contends that he gave a 'Security Control Message' on 02.10.1994 at about 5.30 A.M. seeking ten days leave, since his wife had expired. Petitioner submits that his father-in-law gave a false complaint against him and his parents in C.K. Dinne police station and that he was arrested on 02.10.1994 itself.

The 1st respondent issued a charge sheet on 09.11.1994 and appointed Sri K. Neelakantha Rao, Inspector of R.P.F. as the enquiry officer. The enquiry was first held on 18.11.1994 and on 06.12.1994 the petitioner's preliminary statement was recorded in the Central Prison, Cuddapah, consequent on permission being accorded by the Superintendent of Central Prison, Cuddapah dated 26.11.1994. Petitioner would contend that his statement was taken under duress, that the enquiry was conducted on 16.12.1994 and Sri K. Hussainappa, Sub-Inspector, R.P.F. and Sri K. Subbarayudu, Assistant Sub-Inspector of Local Police were examined as prosecution witnesses. The enquiry officer submitted his report on 23.12.1994 holding that the charges levelled against the petitioner was proved. The petitioner was issued showcause notice dated 26.12.1994 to which he submitted his explanation. The 1st respondent, thereafter, passed the order

of removal from service vide proceedings dated 20.01.1995. The appeal preferred by the petitioner was rejected by the 2nd respondent and the order of punishment was confirmed vide proceedings dated 16.06.1996. During the pendency of disciplinary proceedings, the petitioner was acquitted in S.C.No.80 of 1995 on the ground that there was no incriminating material that he had ill-treated and harassed his wife. Enclosing the copy of the judgment in S.C.No. 80 of 1995 the petitioner preferred the revision petition to the 3rd respondent which was rejected by proceedings dated 5/6-01.1999.

In the counter-affidavit filed by the Divisional Security Commissioner, it is, *inter alia,* stated that the petitioner, after performing night duty on 30.09.1994/01.10.1994, left headquarters without obtaining permission from the Sub-Inspector, Railway Protection Force on coming to know that his wife was behaving abnormally. The respondent denied the allegation that the petitioner had given a "Security control message" on 02.10.1994 seeking ten days leave on the ground that his wife had expired. According to the respondents, the petitioner only informed about his wife having committed suicide to the Sub-Inspector, Railway Protection Force through security control. The petitioner did not ask for leave and had not sent a telegram or a leave application. It is stated that the petitioner was arrested on 22.10.1994 in Cr.No. 59 of 1994. The Disciplinary authority placed the petitioner under suspension and issued a major penalty charge sheet under rule 153 of RPF Rules, 1987. It is stated that an enquiry officer was appointed to conduct a regular departmental enquiry as per rule 153.5 of the RPF Rules, 1987 and that the enquiry officer initially

fixed the date of enquiry as 18.11.1994. It is stated that after obtaining permission from the Superintendent, Central Prison, Cuddapah, the departmental enquiry was conducted on 06.12.1994 and the preliminary statement of the petitioner was recorded, by the enquiry officer, in the central prison. Respondent denies the allegation that the petitioner's statement was taken under duress, and submits that the petitioner had stated in the preliminary enquiry that he had no objection to attend the enquiry. The petitioner is said to have submitted a representation on 06.12.1994 engaging the services of his friend Sri M. Sreeramulu as his Defence Counsel. It is stated that the enquiry officer examined two prosecution witnesses, Sri K. Subbarayudu, Asst.Sub-Inspector of Police C.K. Denne Police Station and Sri K. Hussainappa, Sub-Inspector, RPF, Adoni and they were subjected to cross examination by the petitioner. Respondents would submit that the petitioner was removed from service, for leaving headquarters without permission and remaining absent unauthorisedly and not for the criminal case, since the police case was a totally separate issue. According to the respondents, the petitioner was dealt with for the charge of leaving headquarters on 01.10.1994 without permission and for remaining absent unauthorisedly from 02.10.1994 and subsequently getting involved in a police case and since the charge of leaving headquarters without permission and remaining absent unauthorisedly was held to be proved in the departmental enquiry the petitioner was removed from service. It is stated that the petitioner had availed the opportunity of cross-examining the prosecution witnesses in the departmental enquiry conducted against him. It is admitted that the disciplinary enquiry was conducted while the petitioner

was in judicial custody. It is stated that the petitioner expressed his willingness to attend the enquiry, when his preliminary statement was recorded by the enquiry officer. Respondents would submit that conducting departmental enquiry, without calling for the petitioner's explanation, was in order and that petitioner's acquittal in the criminal case would not preclude disciplinary action being taken against him. Respondents would deny the contention that the punishment imposed is disproportionate to the charges, since leaving headquarters without permission and absenting from duty unauthorisedly was an act of serious indiscipline in the armed forces. It is stated that since both the charges, which were levelled against the petitioner and were held proved in the departmental enquiry, were serious in nature the petitioner was removed from service. It is stated that the punishment of removal from service imposed on the petitioner by the 1st respondent, in proceedings dated 20.01.1995, was confirmed by the 2nd respondent on 16.04.1996, and again confirmed by the 3rd respondent on 06.01.1999 after carefully looking into and examining the material evidence on record.

Sri J.M. Naidu, learned Counsel for the petitioner, would seek to have the disciplinary proceedings instituted against the petitioner and the punishment of removal imposed on him quashed on the following grounds. (1) The Petitioner was not paid subsistence allowance resulting in violation of principles of natural justice. Learned Counsel would place reliance on **Cap. M. Paul Anthony V. Bharat Gold Mines Ltd**[1] in this regard. (2) Since the petitioner had been acquitted in the criminal case, the punishment imposed on him for his involvement in a criminal case

was liable to be set aside, more so since no disciplinary enquiry was held on the charges which formed the basis of the criminal case and the petitioner had been charged only for his involvement in a criminal case. Learned Counsel would place reliance on **S.K. Ramju Vs. Regional Manager, APSRTC, Nalgonda, Nalgonda District**[2] in this regard. (3) Since the allegation, that the petitioner had murdered his wife and child, weighed with the respondent authorities in imposing the punishment of removal from service and as the petitioner was acquitted of this offence in S.C.No. 80 of 1995, and no disciplinary enquiry was held to enquire into this charge, the punishment imposed on him for moral turpitude was liable to be set aside and since this was the main charge, the punishment imposed on the petitioner of removal from service was liable to be set aside. Learned Counsel would submit that for the charge, of leaving headquarters without permission and for unauthorized absence, the petitioner ought not to have been imposed the severe punishment of removal from service more so since the petitioner was in judicial custody from 02.10.1994,and the disciplinary enquiry was itself held in the Central Prison, Cuddapah. According to the learned Counsel, the petitioner could not be said to have remained unauthorizedly absent from duty, since he was required to attend duty only on the after-noon of 2nd October 1994, on which date the petitioner was arrested and illegally detained by the police. Learned Counsel would submit that, though in fact the petitioner had been arrested on 2nd October 1994, the police authorities had shown his arrest only on 22.10.1994. According to the learned Counsel, even if the police version were to be believed, absence of the petitioner from duty

was only for 20 days and this coupled with the fact that the respondents themselves admit that the petitioner had informed them about his wife having committed suicide, were circumstances which warranted taking a lenient and sympathetic view. The punishment of removal from service, in such circumstances, was grossly disproportionate and was liable to be set aside. Learned Counsel would place reliance on **Syed Zaheer Hussain Vs. Union of India**[3], **Union of India Vs. Giriraj Sharma**[4], **M. Krishnam Raju Asst. Technical Officer, Commercial Electronics Group, ECIL, Hyderabad V. The Electronics Corporation of India rep.,by its Managing Director, Industrial Development Area, Hyderabad**[5], **K. Balangi Reddy Vs. APSRTC, Hyderabad**[6], **D. Ramulu Vs. The Government of India, rep, by its Director General Railway Protection Fore, Rail Bhavan, New Delhi**[7], **K. Rambabu Vs. Union of India, rep., by its Director General, Railway Protection Force, Rail Bhavan, New Delhi**[8], and **The Dy. Chief Security Commissioner, Railway Protection Force, South Central railway, Secunderabad Vs. Jahangir**[9], in this regard.

Sri G.S. Sanghi, learned Standing Counsel for the railways, on the other hand, would submit that failure to pay subsistence allowance was of no consequence, since it is not even the case of the petitioner that prejudice had been caused to him thereby or that he was precluded from participating in the departmental enquiry on that score. Learned Standing Counsel would submit that, in the absence of prejudice being caused to the delinquent

employee mere non-payment of subsistence allowance cannot vitiate an otherwise valid departmental enquiry. Learned Standing Counsel would place reliance on **U.P. State Textile Corporation Ltd Vs. P.C. Chaturvedi**[10] in this regard. Learned Standing Counsel would submit that the Railway Protection Force is a disciplined force wherein no form of indiscipline could be permitted and that, in such a disciplined force, leaving headquarters without permission and unauthorised absence from duty for 20 days would justify imposition of punishment of removal from service. Learned Standing Counsel would submit that, for leaving headquarters without permission and for remaining unauthorisedly absent from duty, the rules provide for imposition of punishment of removal from service, and that the punishment imposed is commensurate with the gravity of misconduct held established. Learned Standing Counsel would urge this Court to exercise restraint and submit that this Court, under Article 226 of the Constitution of India, would not substitute the punishment imposed by the disciplinary authority nor would it go into the adequacy or sufficiency of the punishment imposed. Learned Standing Counsel would place reliance on **M.M. Malhotra Vs. Union of India**[11], **V. Ramana Vs. APSRTC**[12], **Indian Drugs & Pharmaceutials Ltd. Vs. R.K. Shewaramani**[13], **Chairman & M.D. Bharat Pet. Corpn.Ltd. Vs. T.K. Raju**[14], **Ram Saran V. I.G. of Police, CRPF**[15], **Bikshapati Virayya Vs. Union of India, rep., by General Manager, Central Railway**[16] and **The Director General Railway, Protection Force, Rail Bhavan, New Delhi: Vs. Sri Ch. Sai Babu**[17].

Before examining the rival contentions, it is necessary to take note of the relevant statutory provisions in this regard.

Section 9 of the Railway Protection Force Act, 1957 relates to dismissal, removal etc., of members of the Force and reads thus:

9 Dismissal, removal, etc. of members of the Force:-

(1) Subject to the provisions of Article 311 of the Constitution and to such rules as the Central Government may make under this Act, any superior officer may-

(i) dismiss, suspend or reduce in rank any a[a] Substituted for the word "member" by Railway Protection Force (Amendment) Ac! (60 of 1985), S. 10(20-9-85). [enrolled member] of the Force whom fie shall think remiss or negligent in the discharge of his duty, or unfit for the same; or

(ii) award any one or more of the following punishments to any "[enrolled member] of the Force who discharges his duty in a careless or negligent manner, or who by any act of his own renders himself unfit for the discharge thereof, namely :-

(a) fine to any amount not exceeding seven days' pay or reduction in pay scale;

(b) confinement to quarters for a period not exceeding fourteen days with or without punishment. drill, extra guard, fatigue or other duty:

(c) removal from any office of distinction or deprivation of any special emolument.

b[b] Substituted, word "member" by Railway Protection Force (Amendment) Ac! (60 of 1985), S. 10(20-9-85). [(2) Any enrolled member of the force aggrieved by an order made under sub-section (1) may. within thirty days from the date on which the order is communicated to him, prefer an appeal against the order to such authority as may be prescribed : Provided that the prescribed authority may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) In disposing of the appeal, the prescribed authority shall follow such procedure as may be prescribed: Provided that no order imposing an enhanced penalty under sub-section (2) shall be made unless a reasonable opportunity of being heard has been given to the person affected by such order.]

Section 17 prescribes the penalties for neglect of duty and reads thus:

17 Penalties for neglect of duty, etc:-

(1) Without prejudice to the provisions contained in S. 9, every enrolled member of the Force who shall be guilty of any violation of duty or wilful breach or neglect of any rule or lawful order made by a superior officer,

or who shall withdraw from duties of hi.s office without permission, or who, being absent on leave, fails, without reasonable cause, to report himself for duty on the expiration of the leave, or who engages himself without authority for an\ employment other than his duty as an enrolled member of the Force, or who shall be guilty of cowardice may be taken into Force custody and shall, on conviction, be punished with imprisonment which may extend to one year.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under this section shall be cognizable and non-bailable.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Central Government may invest Assistant Inspector-General, Senior Commandant or Commandant with the powers of a Magistrate of any class for the purpose of inquiring into or trying any offence committed by an enrolled member of the Force and punishable under this Act, or any offence committed by an enrolled member of the Force against the person or property of another member of the Force:

Provided that-

(i) when the offender is on leave or absent from duty: or

(ii) when the offence is not connected with the offender's duties as an enrolled member of the ' Force; or

(iii) when it is a petty offence even if connected with the offender's duties as an enrolled member of the Force: or

(iv) when, for reasons to be recorded in writing, it is not practicable for the Commandant invested with the powers of a Magistrate to inquire into or try the offence, the offence may, if the prescribed authority within the limits of whose jurisdiction the offence has been committed so requires, be inquired into or tried by an ordinary criminal Court having jurisdiction in the matter.

(4) Nothing contained in this section shall be construed to prevent any enrolled member of the Force from being prosecuted under any other law for any offence made punishable by that law, or for being liable under any such law to any other or higher penalty or punishment than is provided for such offence by this section:

Provided that no person shall be punished twice for the same offence.

In exercise of the powers conferred under Section 21 of the Railway Protection Act, 1957, the Railway Protection Force Rules, 1957 were made. Chapter 11 of the said Rules relates to discipline and conduct. Rule 143 thereunder relates to responsibilities of a member of the Force during suspension and reads as under:

143. Responsibilities of member of the Force during suspension.

1. A member of the Force shall not, by reason of his suspension, cease to be a member of the Force during the period of his suspension. The powers vested in hi as such member shall be in abeyance but he shall be subject to the same responsibilities and discipline and penalties to which he would have been subject if he went on duty.
2. Every member of the Force shall during the period of his suspension stay at his headquarters or at such place which may be specified by the disciplinary authority and shall present himself daily for attendance to the authority nominated by the disciplinary authority;

   Provided that the disciplinary authority may, for special reasons, grant permission in writing to the member to leave the station for a specified period and on revocation of such suspension the period of such absence shall be regularized as kind of leave due in case the period of suspension is treated as period spent on duty.
3. An enrolled member of the Force under suspension shall deposit his arms and accountrements with the Quarter Master or such officer as may be specified by the disciplinary authority.
4. A member of the Force under suspension shall not wear his uniform nor shall he be employed on ground duty nor on any such duty which might entail exercise of his power as a member of the Force nor shall he be issued arms and ammunition.
5. A member of the Force under suspension shall be allowed reasonable facilities for the preparation of his defence in connection with the charges leveled against him.

Rule 146 relates to the code of behaviour for members of the Railway Protection Force. Rule 146(4) reads thus:

"Discreditable conduct: No member of the Force shall act in any manner prejudicial to discipline or conduct himself in such a manner which is reasonably likely to bring discredit to the reputation of the Force"

Rule 147 enumerates the offences relatable to duties of enrolled members, and thereunder the commission of any of the act or acts by an enrolled member of the Force, enumerated therein, shall render him liable for punishment under Section 9 or

Section 17 or both.

Clause vi of Rule 147 reads thus:

"Absenting himself without proper intimation to his controlling authority or without sufficient cause overstaying leave granted to him or failing without reasonable cause to report himself for duty on the expiry of such leave."

Chapter 12 relates to disciplinary and penal punishments and Rule 148 thereunder gives a description of the punishments. Rule 149 relates to other minor punishments. Rule 153 prescribes the procedure for imposing major punishments. Rule 155 relates to determination of punishments and Rule 156 to imposing of punishment of dismissal etc.

Rule 155 and156 read thus:

155 Determination of punishment:-

In determining the punishment, the character, previous bad record and punishment of party charged shall not be taken into consideration unless in a case where they are made subject-matter of a specific charge in the proceeding itself. Offences connoting moral turpitude shall be carefully distinguished from smaller lapses of conduct. It is essential that the punishment shall be inflicted keeping in view the nature of duties expected from the member of the Force and the misconduct by him.

156 Imposing of punishment of dismissal, etc:-

Before coming to any lower punishment, the disciplinary authority with a view to ensuring the maintenance of integrity in the Force shall consider the award of punishment of dismissal or removal from service to any member of the Force in the following cases, namely :

(a) Dismissal;

(i) conviction by a criminal court :

(ii) serious misconduct or including in committing or attempting or abetting an offence against railway property ;

(iii) discreditable conduct affecting the image and reputation of the Force ;

(iv) neglect of duty resulting in or likely to result in loss to the railway or danger to the lives of persons using the railways;

(v) insolvence or habitual indebtedness ; and

(vi) obtaining employment by concealment of his antecedents which would ordinarily have debarred him from such employment.

(b) Removal from Service :

(i) any of the misconduct for which he may be dismissed under Cl. (a) above ;

(ii) repeated minor misconducts ;

(iii) absence from duty without proper intimation or overstay beyond sanctioned leave without sufficient cause.

FAILURE TO PAY SUBSISTENCE ALLOWANCE: ITS EFFECT ON THE DEPARTMENTAL ENQUIRY:

In **CAPT.M.PAUL ANTHONY**[1], the Supreme Court held thus:-

"……..EXERCISE of right to suspend an employee may be justified on the facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by a "suspension syndrome" and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee's trivial lapse which has often resulted in suspension. **Suspension notwithstanding, non-payment of subsistence allowance is an inhuman act which has an unpropitious effect on the life of an employee. When the employee is placed under suspension, he is demobilised and the salary is also paid to him at a reduced rate under the nickname of "subsistence allowance", so that the employee may sustain himself.** This court, in O. P. Gupta v. Union of India made the following observations with regard to subsistence allowance

"…….There is no doubt that an order of suspension, unless the departmental enquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression 'subsistence allowance' has an undeniable penal significance. The dictionary meaning of the word 'subsist' as given in Shorter Oxford 'english Dictionary, Vol. II at p. 2171 is 'to remain alive as on food; to continue to exist'. 'subsistence' means - means of supporting life, especially a minimum livelihood. " (emphasis supplied)

IF, therefore, even that amount is not paid, then the very object of paying the reduced salary to the employee during the period of suspension would be frustrated. The act of non-payment of subsistence allowance can be likened to slow-poisoning as the employee, if not permitted to sustain himself on account of non-payment of subsistence allowance, would gradually starve himself to death…..

"…….The provision for payment of subsistence allowance made in the service rules only ensures non-violation of the right to life of the employee. That was the reason why this court in **State of Maharashtra v. Chandrabhan Tale** struck down a service rule which provided for payment of a nominal amount of rupee one as subsistence allowance to an employee placed under suspension. This decision was followed in **Fakirbhai Fulabhai Solanki v. Presiding Officer** and it was held in that case that if an employee could not attend the departmental proceedings on account of financial stringencies caused by non-payment of subsistence allowance, and thereby

could not undertake a journey away from his home to attend the departmental proceedings, the order of punishment, including the whole proceedings would stand vitiated….."

"…….THE question whether the appellant was unable to go to Kolar Gold Fields to participate in the enquiry proceedings on account of non-payment of subsistence allowance may not have been raised before the enquiry officer, but it was positively raised before the High court and has also been raised before us. Since it is not disputed that subsistence allowance was not paid to the appellant during the pendency of the departmental proceedings, we have to take strong notice of it, particularly as it is not suggested by the respondents that the appellant had any other source of income.

"……..Since in the instant case the appellant was not provided any subsistence allowance during the period of suspension and the adjournment prayed for by him on account of his illness, duly supported by medical certificates, was refused resulting in ex parte proceedings against him, we are of the opinion that the appellant has been punished in total violation of the principles of natural justice and he was literally not afforded any opportunity of hearing. Moreover, as pleaded by the appellant before the High court as also before us that on account of his penury occasioned by non-payment of subsistence allowance, he could not undertake a journey to attend the disciplinary proceedings, the findings recorded by the enquiry officer at such proceedings, which were held ex parte, stand vitiated….." (emphasis supplied)

As laid down by the Apex Court in **Cap. M. Paul Anthony**[1], inability of a delinquent employee to participate in the departmental enquiry, on grounds of non-payment of subsistence allowance, would vitiate the entire disciplinary proceedings culminating in the order of punishment. In the case on hand, however, the petitioner not only participated in the enquiry, but he did not even raise a plea regarding non-payment of subsistence allowance, either before the enquiry officer or the disciplinary authority. In this context, reference may be made to **P.C. Chaturvedi**[10], wherein the Supreme Court held thus:-

"….. So far as the effect of not paying the subsistence allowance is concerned, before the authorities no stand was taken by the respondent no.

1-employee that because of non-payment of subsistence allowance, he was not in a position to participate in the proceedings, or that any other prejudice in effectively defending the proceedings was caused to him. He did not plead or substantiate also that the non-payment was either deliberate or to spite him. **It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso facto be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employee is handicapped because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as an absolute position in law that non-payment of subsistence allowance amounts to denial of opportunity and vitiates departmental proceedings.**

"……..IT is to be noted that no grievance was made at any time during the pendency of the proceedings that the respondent no. 1-employee was being prejudiced on account of non-payment of subsistence allowance. In fact, for the first time the request was made for payment of subsistence allowance on 5. 1. 1993 i. e. after completion of the enquiry……."

The petitioner herein participated in the enquiry proceedings and chose not to raise the issue of non-payment of subsistence allowance either before the enquiry officer or the disciplinary authority. Since no prejudice has been caused to the petitioner, I see no reason to hold that the disciplinary proceedings are vitiated for non-payment of subsistence allowance to the petitioner.

CHARGE OF INVOLVEMENT IN A CRIMINAL CASE: CONSEQUENCES OF ACQUITTAL:

There is, however, considerable force in the submission of Sri J.M. Naidu, learned Counsel for the petitioner, that the charge levelled against the petitioner of involvement in a criminal case is liable to be set aside, consequent upon his acquittal in the criminal case. It is necessary to note that the petitioner was not charged of misconduct for the allegations/charges which formed the basis of the criminal prosecution instituted against him. He was merely charged of involvement in a criminal case. While the employer

has the power to hold a departmental enquiry, for misconduct of an employee, on the very same charge for which the employee was also tried by a criminal Court, the question which arises for consideration is as to whether the petitioner could have been held guilty of involvement in a criminal case, without his being charged of misconduct for the incident, (which forms the basis of the criminal case), on his acquittal in the criminal case. In this context reference may be made to **S.K. Ramju**[2], wherein the Division bench of this Court held thus:-

"…… In the instant case, the appellant qua employee is not charged with the commission of any misconduct. He by reason of the alleged act of rashness and negligence of driving of the vehicle, as a result whereof a valuable life of a cyclist was lost, is said to have damaged the reputation of the respondent-Corporation. Since rash and negligence on the part of the driver in the driving of the vehicle and/or his driving of the vehicle did not stand proved in the criminal case, the question of the appellant's causing any damage to the reputation of the Corporation does not arise……"

Since the petitioner was merely charged of involvement in a criminal case and as he was acquitted by a competent criminal Court, he can no longer be held guilty of misconduct of involvement in a criminal case. That portion of the order of the Disciplinary authority, holding the petitioner guilty of misconduct of involvement in a criminal case, is liable to be set aside.

SCOPE OF INTERFERENCE WITH THE QUANTUM OF PUNISHMENT IN CASES WHERE SOME OF THE SEVERAL CHARGES ARE HELD ESTABLISHED.

The petitioner was however also charged of the misconduct of having left headquarters without permission and of having remained unauthorisedly absent from duty. It is well settled that even if some of the several charges, levelled against the

delinquent employee, are held to have been established, this Court, in proceedings under Article 226 of the Constitution of India, would not interfere, if the punishment imposed is one which could have been imposed on the charge held established.

In **State of Orissa Vs. Bidyabhushan**[18], the Supreme Court held thus:

"…….Therefore if the order may be supported on any finding as to substantial misdemeanor for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction, if the findings of the enquiry officer or the Tribunal prima facie make out a case of misdemeanor, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice. The High Court was, in our judgment, in error in directing the Governor of Orissa to reconsider the question….."

In **Railway Board V. Niranjan Singh**[19], the Supreme Court held thus:

"……..Before we take up for consideration Point No. 2 formulated above, it would be convenient to deal with Point No. 3. It was not disputed before us that the first charge levelled against the respondent is a serious charge and it would have been appropriate for the General Manager to remove the respondent from service on the basis of his finding on that charge. But we were told that we cannot assume that the General Manager would have inflicted that punishment solely on the basis of that charge and consequently we cannot sustain the punishment imposed if we hold that one of the two charges on the basis of which it was imposed is unsustainable. This contention cannot be accepted in view of the decision of this Court in State of Orissa v. Bidyabhushan Mohapatra, (1963)Suppl. (1) SCR 648= (AIR 1963 SC 779) wherein it was held that if the order in an enquiry under Article 311 can be supported on any finding as substantial misdemeanour for which the punishment imposed can lawfully be imposed it is not for the Court to consider whether that ground alone would have weighed with the authority in imposing the punishment question……"

QUANTUM OF PUNISHMENT: SCOPE OF JUDICIAL REVIEW:

The only question which remains to be considered is the

quantum of punishment and whether the punishment of removal from service, for proved misconduct of leaving headquarters without permission and remaining unauthorisedly absent from duty, is shockingly disproportionate and irrational.

In **B.C. Chaturvedi v. Union of India**[20], the Supreme Court held thus:-

"….. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. **The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof….” (emphasis supplied)**

In **Union of India Vs. G. Ganayutham**[21], the Supreme Court held thus:-

"……..**therefore, to arrive at a decision on 'reasonableness' the Court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at having regard to the above principles, and must have been a bona fide one.** The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the Court to substitute its view……."

"…… **IN other words, to characterise a decision of the administrator as 'irrational' the Court has to hold, on material, that it is a decision 'so outrageous' as to be in total defiance of logic or moral standards**……"

"…….We are of the view that even in our country — in cases not

involving fundamental freedoms — **the role of our courts/tribunals in administrative law is purely *secondary* and while applying Wednesbury and CCSU principles to test the validity of executive action or of administrative action taken in exercise of statutory powers, the courts and tribunals in our country can only go into the matter, as a secondary reviewing court to find out if the executive or the administrator in their primary roles have arrived at a reasonable decision on the material before them in the light of Wednesbury and CCSU tests.** The choice of the options available is for the authority; the court/tribunal cannot substitute its view as to what is reasonable……."

"……. In such a situation, unless the court/tribunal opines in its secondary role, that the administrator was, on the material before him, irrational according to *Wednesbury: 1948 (1) KB 223* or *CCSU: 1984(3) All ER 935* norms, the punishment cannot be quashed. Even then, the matter has to be remitted back to the appropriate authority for reconsideration. It is only in very rare cases as pointed out in *B.C. Chaturvedi case: 1995(6) SCC 749* that the Court might — to shorten litigation — think of substituting its own view as to the quantum of punishment in the place of the punishment awarded by the competent authority. (In *B.C. Chaturvedi: 1995(6) SCC 749* and other cases referred to therein it has however been made clear that the power of this Court under Article 136 is different.)……"

In **Om Kumar v. Union of India**[22], the Supreme Court held thus:-

"……..Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to *Wednesbury* principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that *Wednesbury* principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment……."

In **V.RAMANA**[12], the Supreme Court held thus:-

"…. **THE common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the Wednesbury's case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.**

TO put differently unless the punishment imposed by the Disciplinary Authority or the appellate Authority shocks the conscience of the Court/tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed….." (emphasis supplied)

"….. This Court in *Om Kumar* v. *Union of India*[1] while considering the quantum of punishment/proportionality has observed that in determining the quantum, role of administrative authority is primary and that of court is secondary, confined to see if discretion exercised by the administrative authority caused excessive infringement of rights. **In the instant case, the authorities have not omitted any relevant materials nor has any irrelevant fact been taken into account nor any illegality committed by the authority nor was the punishment awarded shockingly disproportionate. The punishment was awarded in the instant case after considering all the relevant materials, and, therefore, in our view, interference by the High Court on reduction of punishment of removal was not called for….." (emphasis supplied)**

In RAM SARAN[15], the Supreme Court held thus:-

"……. **THE Courts should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards.** In view of what has been stated in (CA) Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. (1948) 1 KB223: (1947)2 All ER680 (CA)commonly known as wednesbury's case the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision. (See:

V.Ramana V. A.P.S.R,.T.C. : 2005(7) SC 338….." (emphasis supplied)

In **T.K.RAJU**[14], the Supreme Court held thus:-

"…… THE power of judicial review in such matters is limited**. This Court times without number had laid down that interference with the quantum of punishment should not be done in a routine manner**. (V. Ramana v. A. P. SRTC and Others, (2005) 7 SCC 338, and State of Rajasthan andanr. v. Mohammed Ayub Naz, 2006 (1) SCALE 79)……." (emphasis supplied)

The nature and extent of punishment to be imposed, for proved misconduct of a delinquent employee, is in employer's realm and the High Court would not sit in appeal over the choice made by the employer in this regard. In exercise of its powers of judicial review the High Court does not, normally, substitute its own conclusions, on the penalty imposed on a delinquent employee, for that of his employer, to impose some other penalty. It is only if the punishment imposed is one which could not have been imposed at all or is one which shocks its conscience would this Court appropriately mould the relief, either directing reconsideration of the penalty imposed or in exceptional and rare cases, to shorten the litigation, impose appropriate punishment with cogent reasons.

In cases where the punishment imposed is questioned as "discriminatory" courts would examine the matter as a primary reviewing authority. However, in cases where the punishment is questioned as "arbitrary" courts confine themselves to the role of a secondary reviewing authority to find out if the competent authority has arrived at a decision on the material before it in the light of the WEDNESBURY test of reasonableness. To arrive at a decision on

"reasonableness" the courts must examine if the competent authority has left out relevant factors or has taken into account irrelevant factors. The punishment imposed by the competent authority must be bonafide, within the four corners of the law and must not be one which no sensible person could have reasonably arrived at having regard to the aforesaid principles. To characterize the punishment as irrational courts must hold that, on the basis of the material on record, the punishment imposed was "so outrageous" as to be in total defiance of logic or moral standards. It is not the normal jurisdiction of superior Courts to interfere with the quantum of punishment in a routine manner unless the decision of the competent authority is illegal, wholly disproportionate to the misconduct proved, suffers from procedural impropriety or shocks the conscience of the Court, in the sense that it is in defiance of logic or moral standards. (**Regional Manager, Rajasthan SRTC Vs. Sohan Lal**[23]).

When the High Court intends to interfere with the quantum of punishment on the ground that it is shockingly disproportionate it must record reasons for coming to such a conclusion. (**Maharashtra State Seeds Corpn. Ltd. Vs. Hariprasad**[24] **Damoh Panna Sagar Rural Regional Bank Vs. Munna Lal Jain**[25]). Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to exercise the power of judicial review in adjudging the validity of the decision. Recording reasons is an indispensable

part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. (**Damoh Panna Sagar Rural Regional Bank**[25]).

Sympathy or generosity as a factor is impermissible. Loss of confidence is the primary factor. **(T.N.C.S. Corpn. Ltd. v. K. Meerabai**[26]). Courts would neither go into the correctness of the choice made by the administrator nor would it substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the appellate authority to reconsider the penalty imposed. (**Damoh Panna Sagar Rural Regional Bank**[25] and **V. Ramana**[12]) .

UNAUTHORISED ABSENCE FROM DUTY:; WHETHER PUNISHMENT OF REMOVAL FROM SERVICE IS GROSSLY DISPROPORTIONATE:

The judgments relied upon by Sri J.M. Naidu, learned Counsel for the petitioner, and Sri G.S.Sanghi, learned standing counsel for the respondent, on the extent to which interfere with the punishment imposed for unauthorised absence from duty would be justified, need to be examined.

In **Giriraj Sharma**[4], the Supreme Court held thus:-

"**……. Assuming Mr Jain is right, we are of the opinion that so far as the present case is concerned the allegation is in regard to the**

incumbent having overstayed the period of leave by 12 days. The incumbent while admitting the fact that he had overstayed the period of leave had explained the circumstances in which it was inevitable for him to continue on leave as he was forced to do so on account of unexpected circumstances. We are of the opinion that the punishment of dismissal for overstaying the period of 12 days in the said circumstances which have not been controverted in the counter is harsh since the circumstances show that it was not his intention to wilfully flout the order, but the circumstances forced him to do so. In that view of the matter the learned counsel for the respondent has fairly conceded that it was open to the authorities to visit him with a minor penalty, if they so desired, but a major penalty of dismissal from service was not called for. We agree with this submission……

In the result we see no merit in this appeal but we would modify the order of the High Court by stating that while we affirm the High Court's order quashing the order of dismissal and directing reinstatement in service with monetary benefits, it will be open to the department, if it so desires, to visit the respondent-petitioner with a minor punishment……" (emphasis supplied)

In **Syed Zaheer Hussain**[3], the Supreme Court held thus:-

"……. IN our view, in the facts and circumstances of the case, the punishment of dismissal from service is too harsh and on the contrary it is required to be substituted by appropriate lesser punishment. Learned counsel for the respondents after instructions has stated that appropriate lesser punishment may be awarded by this Court. It will be acceptable to the respondents. In our view, ends of justice will be served if we set aside the order of dismissal of the appellant and instead direct reinstatement of the appellant in service with continuity and with all other benefits save and except withdrawing 50 per cent of back wages from the date of dismissal i. e. 11-10-1988 till today. In our view, this punishment which will involve substantial monetary loss to the appellant will meet the ends of justice and will be a sufficient corrective measure for the appellant. The request of learned counsel for the respondents that two future increments may also be withheld without cumulative effect does not appear to us to be justified on the peculiar facts and circumstances of the case. In our view, the aforesaid monetary loss to the appellant will meet the ends of justice so that he may be careful in future……..."

In **State of Punjab v. Mohinder Singh**[27], the Supreme Court held thus:-

"…….**We do not agree with the High Court that a single act of**

remaining absent without leave would not amount to gravest act of misconduct. This would depend upon the fact situation of each case. In the present case we find that the respondent remained absent without leave for quite a long period. The explanation rendered by him did not find favour either with the enquiry officer or the punishing authority. The finding of facts were not disturbed in the departmental appeal/revision. This finding was also not disturbed in the suit. **The only ground for setting aside the orders impugned in the suit is that a single act of remaining absent from duty without sanctioned leave did not merit an order of dismissal from service. We find from the record that the respondent had remained absent from duty without sanctioned leave on 15 different occasions. Although no major punishment was awarded to him but he was ordered to be censured once. In our view, the respondent being member of a disciplined force could not be permitted to remain absent without taking leave and that too for such a long period. He cannot be retained in service.** The order impugned before us is set aside and the suit is ordered to be dismissed……" (emphasis supplied)

In **State of Rajasthan v. Mohd. Ayub Naz**[28], the Supreme Court held thus:-

"……**Absenteeism from office for a prolonged period of time without prior permission by government servants has become a principal cause of indiscipline which has greatly affected various government services.** In order to mitigate the rampant absenteeism and wilful absence from service without intimation to the Government, the Government of Rajasthan inserted Rule 86(3) in the Rajasthan Service Rules which contemplated that if a government servant remains wilfully absent for a period exceeding one month and if the charge of wilful absence from duty is proved against him, he may be removed from service. In the instant case, opportunity was given to the respondent to contest the disciplinary proceedings. He also attended the enquiry. **After going through the records, the learned Single Judge held that the admitted fact of absence was borne out from the record and that the respondent himself had admitted that he was absent for about 3 years. After holding so, the learned Single Judge committed a grave error that the respondent can be deemed to have retired after rendering of service of 20 years with all retiral benefits which may be available to him. In our opinion, the impugned order of removal from service is the only proper punishment to be awarded to the respondent herein who was wilfully absent for 3 years without intimation to the Government.** The facts and circumstances and the admission made by the respondent would clearly go to show that Rule 86(3) of the Rajasthan Service Rules is proved against

him and, therefore, he may be removed from service……."

In **R.K. Shewaramani**[13], the Supreme Court held thus:-

"…… At this juncture, it is to be noted that the validity of a rule similar to Rule 30(A) was considered by this Court in *Pyare Lal Sharma* v. *Managing Director*[1]. In that case after having held that the rule concerned was intra vires, on the facts of the case it was held that the amended rule could not operate retrospectively and could operate only from the date of amendment and, therefore, on the facts of that case it was held that for a period prior to the introduction of the amended provision, action cannot be taken. **In the instant case, the period of absence to which reference has been made by the appellants clearly related to a period subsequent to the date of introduction of the amended provision. That being so, the High Court has rightly not led any stress on that plea though urged by the respondent employee before the High Court….." (emphasis supplied)**

In **M.M.MALHOTRA**[11], the Supreme Court held thus:-

"……THE range of activities which may amount to acts which are inconsistent with the interest of public service and not befitting the status, position and dignity of a public servant are so varied that it would be impossible for the employer to exhaustively enumerate such acts and treat the categories of misconduct as closed. It has, therefore, to be noted that the word "misconduct" is not capable of precise definition. But at the same time though incapable of precise definition, the word "misconduct" on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject- matter and the context wherein the term occurs, having regard to the scope of the statute and the public purpose it seeks to serve….."

In **Delhi Transport Corpn. v. Sardar Singh**[29], the Supreme Court held thus:-

"…….**When an employee absents himself from duty, even without sanctioned leave for a very long period, it prima facie shows lack of interest in work**. Para 19(*h*) of the Standing Orders as quoted above, relates to habitual negligence of duties and lack of interest in the authority's work. **When an employee absents himself from duty without sanctioned leave, the authority can, on the basis of the record, come to a conclusion about the employee being habitually negligent in duties and an exhibited lack of interest in the employer's work**. Ample material was produced before the Tribunal in each case to show as to how the employees

concerned were remaining absent for long periods which affects the work of the employer and the employee concerned was required at least to bring some material on record to show as to how his absence was on the basis of sanctioned leave and as to how there was no negligence. **Habitual absence is a factor which establishes lack of interest in work. There cannot be any sweeping generalisation. But at the same time some telltale features can be noticed and pressed into service to arrive at conclusions in the departmental proceedings**……(emphasis supplied)

In **Jahingir**[9], the Division bench of this Court held thus:

"……..Having heard the learned counsel for the delinquent-employee and the learned counsel for the Management, we do not find any substantive ground to interfere with the discretionary order made by the learned single Judge. We say this because the learned Judge has pointed out that the misconduct relating to the unauthorized absence attributed to the employee is satisfactorily proved. At the same time the learned Judge has also pointed out that the extreme penalty of dismissal could not be sustained firstly in terms of Rule 156(b)(iii) of the Railway Protection Force Rules, which states that in case the charge of unauthorized absence of an employee is proved, the maximum penalty that could be imposed on a delinquent-employee is removal from service and that the Rules do not authorize the disciplinary authority to impose penalty of dismissal in the case of unauthorized absence. **The learned Judge has further pointed out that the ground on which the delinquent employee absented himself without informing the employer was found to be real. Nothing is placed before us to contest the correctness of the finding recorded by the learned judge. Although it is quite often said and reiterated by the Courts that once a misconduct alleged against a delinquent employee is proved satisfactorily by substantive legal evidence, normally the reviewing Courts should not interfere with the quantum of punishment passed on such delinquent-employee, an exception is made i.e., where the Court finds that penalty imposed by a disciplinary authority on a delinquent is totally disproportionate or where it shocks the conscience of the Court, the Court can invoke the *Wednesbury's rule* and interfere with the disciplinary measure by virtue of the powers under Article 226 read with Article 14 of the Constitution of India. That is exactly what the learned Judge was persuaded to do. In that view of the matter we do not think it appropriate to interfere with the discretionary Order made by the learned single Judge……..**" (emphasis supplied)

In **M.KRISHNAM RAJU**[5], this Court held thus:-

"Applying these principles to the facts of the case, I find that in the present

case, the petitioner had been absent earlier for 88 days from 12.10.1981 to 7.1.1982 and had been granted extraordinary leave on medical grounds. According to the charge-sheet, he was again absent for 121 days during the year 1982 on medical grounds on the following occasions.

For 8.3.1982 to 25.3.1982 ….18 days earned leave plus sick leave

For 1.6.1982 to 11.6.1982 …. 11 days

For 16.8.1982 to 15.11.1982 .. 92 days

The show cause notice itself stated that there was no leave to his credit and the period of absence could not bee regularized and his request for extension of leave on medical grounds without any proper medical certificate in respect of his sickness cannot be accepted and the absence was treated as unauthorised absence. In the enquiry report, it was found that the petitioner appeared before the Chief Medical Officer with the medical certificate issued by a doctor in the panel of the Corporation and the Chief Medical Officer endorsed a Certificate that the petitioner was ill and required rest. However, he noted that this applied only for the absence from 16.10.82, whereas the earlier period of 18 days from 8.3.1982 to 25.3.1982, and 11 days from 1.6.1982 to 11.6.1982, there was no supporting evidence. I looked through the records of the Corporation and I find that the petitioner had in fact given medical certificates for these periods also and there is a confidential note stating that the entire period of absence was supported by medical certificates. The conclusion in the enquiry report is that "Sri Krishnam Raju remained absent fro a total period of 169 days – 92 days were on account of sickness, 29 days for no substantial reason and 41 days accounted for the leave due to his credit". This conclusion itself indicated that even the enquiry officer was aware of the principle that where the absence is due to sickness it is not a misconduct, for the absence of 92 days has been condoned by the report itself. **Finding of absence without cause is only with reference to 29 days. Consequently, this period also should be treated as absence on account of sickness, with result that there was no absence without cause requiring any finding of unauthorised absence. The learned counsel for the respondent referred to the circular dated 6.12.1973 where the employees are informed that no extraordinary leave shall be sanctioned more than once in a period of three years, and since this employee had already availed of extraordinary leave in the previous year, he was not entitled to any such leave. I find that a reference to the regulations shows that there is no such bar in the corporation. As I have noted above, if the absence is justified and the employee has no leave earned to his credit, the corporation is bound to sanction extraordinary leave as it cannot be unreasonably denied. I can see from the report that the corporation also has understood the matter in the same manner, as in spite of the petitioner not having any leave to his credit, the leave for which the medical certificate is accepted as produced, is treated as sick leave and**

condoned. Since the enquiry report is vitiated by ignoring the relevant fact viz., that there were medical certificates for the entire period of absence, the finding that the misconduct was proved, is unsustainable. The appellate order also suffers from the same infirmity, for there is no application of mind to the complaint of the petitioner that his absence was entirely supported by medical certificates, and had been ignored by the enquiry officer. Consequently the appellate order also is unsustainable. I have, therefore, no hesitation in canceling both the order of punishment as well as the appellate order……."(emphasis supplied).

In **M.S.N. Prasad Vs. Chief Secretary Commissioner**[30], this Court held thus:-

"…….After considering the rival submissions and the material on record, I find that there is some substance in the contentions of the petitioner with reference to the charges 2 and 3. **With reference to the first Charge, Rule 104.3 of Railway Protection Force Rules specifically contemplates that no member of the Force shall leave his station even on holiday without the specific permission of the authority, empowered to grant his casual leave. Therefore, the said Rule contemplates that the petitioner before leaving the station, he should obtain permission. Admittedly, the petitioner did not obtain prior permission. Though it was stated that the petitioner has tried to obtain permission by contacting the Inspector at Nellore, he was not available. Therefore, the petitioner sent his application for permission by dispatching the same. But dispatching the application seeking permission for leaving the headquarters is not sufficient compliance in terms of the above said Rule. Therefore, the petitioner has clearly violated the provision of Rule 104.3.**

In so far as the other two charges are concerned the chares read as under:-

"(ii) He proceeded to avail weekly rest on 21.7.96 vide entry No.31 of 20.7.96 without obtaining prior permission from controlling authority

(iii) He remained absent from his duties from 1800 hours of 20.7.1996 to 12.30 hours of 21.7.96 during which period there was serious Law & Order problem of detaining trains by public at Gudur Railway Station"

The second charge is proceeding to avail weekly rest by making an entry without obtaining prior permission of the controlling authority. The learned Standing Counsel did not bring to my notice any provision, which contemplates such prior permission from the controlling authority. In the absence of any specific rule, I do not find there is any substance in the said charge. On the other hand, it is stated by the learned for the petitioner that the Sub-Inspector would hand over the charge to the Assistant Sub-inspector while availing the weekly rest. Similarly, the Assistant Sub-Inspector will handover the charge to the Sub-Inspector while availing the

weekly rest and therefore the second charge is without any substance. Similarly, with reference to the third charge, if the petitioner is availing weekly rest, he was not under an obligation to attend the duties. It is not the case of the respondents that the petitioner was not availing weekly rest on that day. Therefore, even with reference to the third charge there was absolutely no merit. Accordingly, the punishment imposed by the respondents may not be proper. **The punishment of withholding increments for three years was imposed in the light of the three charges, which are alleged to have been proved against the petitioner. As the charges 2 and 3 are without any substance, to that extent the findings of the authorities are liable to be set aside. However, the matter is to be remitted back to consider the punishment imposed. The case of the petitioner deserves a lesser punishment that what was imposed in view of the above findings of this Court.**

Accordingly, the impugned proceedings are set aside and the matter is remitted back to the disciplinary authority for considering the imposition of lesser punishment with reference to the first charge. Therefore, the third respondent is directed to pass appropriate orders, within a period of six weeks from the date of receipt of this order……." (emphasis supplied)

In **K. Rambabu**[8], this Court held thus:

"……..It is seen from the records that the petitioner left on 8.12.1989. The reasons given by him for leaving the headquarters are that his wife was not well at Kovvur and therefore he had to leave immediately and that while he was at Kovvur, he himself fell sick and he obtained treatment from a Government Doctor. **Even while he was at Kovvur, the authorities passed an order of suspension on 3.1.1990. Therefore, if at all the unauthorised absence has to be construed, it has to be only up to 3.1.1990 and not up to 26.2.1990. The petitioner himself admitted that he left the headquarters on account of certain unforeseen circumstances and he was suspended on 3.1.1990, therefore the unauthorised absence has to be only confined up to 3.1.1990 as when once he is placed under suspension, the question of treating his absence as unauthorised absence from 3.1.1990 would not arise.** As can be seen from the report of the enquiry officer, he found him guilty of the unauthorised absence only on the ground that he failed to inform the authorities about the private sickness. The enquiry officer never discussed the charge relating to leaving the headquarters without permission. The reasons given by the petitioner was that he received message that his wife was sick at Kovvur, therefore he had to leave on emergency basis, but this aspect was never considered and there is no specific finding as to whether the charge of leaving headquarters was proved or not. But the question that remains for consideration is whether the punishment of compulsory retirement for the misconducts referred to above viz., leaving headquarters

without permission and unauthorized absence from 8.12.1989 to 3.1.1990 would be proper punishment.

Admittedly under Rule 146, the misconducts are divided into number of heads. Under Rule 146.2 the misconducts were enumerated relating to neglect of duty; 146.3 deals with disobedience of orders; 146.4 pertains to discredible conduct; 146.5 relates to misconduct towards Member of the Force; 146.6 regarding falsehood and prefabrication; 146.7 relates to corrupt or improper practice and 146.8 deals with abuse of authority. In the order of charge of misconducts, the unauthorized absence or leaving the headquarters would only fall under Rule 146.2 i.e., neglect of duty. It cannot be treated as a serious misconduct as falling in the other clause under Rule 146.3 or 146.8. Therefore, it has to be seen whether for the minor misconduct of negligence of duty, would it be just on the part of the respondents imposing punishment of compulsory retirement from service. The authorities did not consider this aspect. Originally the disciplinary authority passed orders of removal on the principal ground of assaulting the co-employee in the Force, but that charge was held not proved by the revisional authority, yet a major punishment was imposed viz., compulsory retirement. **In my considered opinion, the compulsory retirement is wholly unconscionable punishment unrelated to the gravity of the misconduct. When various types of misconducts are notified in the Rules with reference to the gravity of the misconduct, the punishments should also vary with the punishments enumerated. The neglect of duty is one of the misconducts for which awarding higher punishment under major misconduct is wholly arbitrary and unreasonable. It is now well settled that this Court normally would not interfere with the orders of punishment passed by the authorities unless the punishments are shockingly disproportionate or unconscionable or the procedure adopted by the authorities are wholly erroneous and violation of the statutory rules. Admittedly in the instant case the punishment as proved against the petitioner was only leaving the headquarters and remaining absent unauthorisedly, for which a proper explanation was given, which was not considered in a fair manner, but yet could it be said that the punishment is in conformity with the misconduct proved against the petitioner. As already stated by me, the punishment of compulsory retirement is grossly disproportionate and shocks the conscience of this Court. Accordingly the order of the disciplinary authority as modified by the order of the revisional authority is set aside. However, the petitioner cannot be left over without imposing any penalty. Hence, the matter is remanded back to the appellate authority for imposing appropriate minor penalty on the petitioner keeping in view the nature of the misconduct as referred above.**

In the result, the Writ Petition is allowed in part. The respondents

are directed to reinstate the petitioner into service forthwith with continuity of service together with half of the back wages. The matter shall be placed before the appellate authority for imposing appropriate minor punishment. There shall be no order as to costs……(emphasis supplied)

In **K.BALANAGI REDDY**[6], this Court held thus:-

"…..As can be seen from the impugned order of the rejection of Review by the 2nd respondent, it is clear that the 2nd respondent had more concentrated on charge NO.2 than charge No.1. Be that as it may, in the beginning portion of the order, it is mentioned as though the petitioner had absented from duties from 21.4.1998 to 28.4.1998 and evidently it may be a mistake or it is because of non-application of mind in proper perspective. **As can be seen from the proved misconduct, the unauthorized absenteeism being for one day and also the second charge relates to habitual irregular attendance the decision taken by the Corporation to impose the penalty of removal when several of the punishments are available definitely appears to be disproportionate with the proved misconduct.** At this distant point of time in the light of the enquiry conducted and in the light of the fact that the writ petitioner had not availed the opportunity, it cannot be said that the enquiry as such is vitiated. **But however, in the light of the fact that the punishment is disproportionate to the proved misconduct, I am inclined to remit the matter back to the 2nd respondent – Regional Manager, Cuddapah, to reconsider the decision relating to the removal of the petitioner and explore the possibilities of imposition of other punishment contemplated by the Regulations in this regard.** In the facts and circumstances of the case, no other relief can be granted at this stage. The 2nd respondent shall take a decision in this regard within a period of three months from the date of receipt of this order……..." (emphasis supplied)

In **D. Ramulu**[7], this Court held thus:-

"……**Admittedly, the petitioner absented from duty without any intimation and without proper permission. In spite of there being letters sent by the respondents to report for duty, he did not do so.** Therefore, he was kept under suspension and enquiry was conducted and thereafter he was removed from service as per the Railway Protection Force Rules, 1987. The petitioner had put in about 10 years of service before he was removed from service. In the counter affidavit also nothing was stated except that on earlier two occasions also, the petitioner submitted a sick certificate from a private medical officer and he was referred to the Medical Officer concerned and on the certification issued by the Medical Officer holding that he is fit to duty, he was permitted to join duty. However, the petitioner did not improve though some lenient view was taken on earlier

occasions. **But, I am of the considered opinion that the punishment of removal from service is highly disproportionate to that of the misconduct alleged and proved. The respondents should have imposed any lesser punishment, such as, stoppage of increments or reduction in the pay scale to the lower stage etc., which could have been a sufficient punishment in the nature of the misconduct alleged against the petitioner.** While dealing with the present case, the respondents also referred to the earlier absence, which they themselves have condoned and accepted the sick certificates submitted by the petitioner. Except this, there is no other misconduct or any punishments suffered by the petitioner for the ten long years of service rendered by him with the respondent-RPF.

In view of the above, I am of the opinion that the order of removal from service passed by the 3rd respondent as confirmed by respondents 1 and 2 is shockingly disproportionate to that of the misconduct alleged against the petitioner. Generally speaking, it is not for this Court to suggest the alternative punishment for the misconduct alleged and proved. However, in this case, the removal had taken place in the year 1989 and the appeal and revision filed by the petitioner were concluded in the year 1998. The writ petition is filed in the year 1999 and we are in to 2005. Therefore, I feel it appropriate to give a quietus to this litigation at this stage itself.

For all the above reasons, the impugned order dated 19.9.1989 of the 3rd respondent as confirmed by respondents 2 and 1 in their orders dated 19.1.1990 and 15.4.1998 respectively, is modified holding that the petitioner is entitled for reinstatement into service, but without any back wages, and without any attendant benefits including notional increments seniority, promotion etc., However, the petitioner is entitled for continuity of service only for the purpose of computation of retiral benefits and not for any other purpose....." (emphasis supplied)

In **Ch. Sai babu**[17], the Division bench of this Court held thus:-

".....The only ground that had been taken before the learned single Judge for challenging the order of removal was that the petitioner was not given opportunity in the domestic enquiry and therefore, the principles of natural justice were violated. The appellants produced before the learned single Judge the records pertaining to the enquiry. The learned single Judge was of the opinion that sufficient opportunity was given to the writ petitioner during the enquiry. The appellants also produced before him the service register of the writ petitioner. **The learned single Judge noted "the petitioner is a**

habitual offender, and due to dereliction of duties, punishment of stoppage of increment for three years was already ordered in the year 1984. But there is no improvement in the conduct of the petitioner". Having come to this conclusion, the learned single Judge found that since the charges levelled against the writ petitioner were not so serious in nature as to warrant extreme punishment of removal from service, one more chance has to be given to the writ petitioner to improve his conduct, he passed the impugned order. The learned single Judge has not recorded reasons as to how the punishment imposed on the respondent – writ petitioner was shockingly or grossly disproportionate to the gravity of charges held proved against the respondent-writ petitioner. The Apex Court in UNION OF INDIA v G.GANAYUTHAM (1997)7 SCC 463) held that the punishment cannot be either interfered with or modified unless it is disproportionate and shocking the conscience of the High Court. Therefore, the order of the learned single Judge cannot be sustained which is liable to be set aside……" (emphasis supplied)

In **Bikshapati Virayya**[16], this Court held thus:

"Another contention urged on behalf of the petitioner is that the 172 days absence from 1.1.1997 to 18.7.1997 was in broken spells and as he was permitted to attend duty after each spell of unauthorized absence, the earlier period of absence should be considered as having been condoned. This contention does not commend acceptance by this Court. The recidivist conduct of the petitioner in resorting to continual spells of unauthorized absence is inconsistent with the conduct required to a public servant. The petitioner as an employee of the railways does not have a right to proceed on leave. Leave is regular only when sanctioned or when the absence is determined to be justified for some medical or other such reason, on proof of legitimizing circumstances for the absence having been submitted by the employee to establish that his absence without prior sanction of leave is justified. **In the case on hand, the petitioner absented himself on a number of occasions for a total period of 172 days, as per his own admission, without due sanction of the period of absence. Such a conduct does constitute misconduct of sufficient gravity as to warrant the penalty of removal from service……..'' (emphasis supplied)**

I n **Giriraj Sharma**[4], while examining the quantum of punishment imposed on an employee for his overstaying, beyond the period of leave, for 12 days, the Supreme Court held that, since the delinquent employee had explained the circumstances in

which it was inevitable for him to continue on leave as he was forced to do so on account of unexpected circumstances and that it was not his intention to wilfully flout the orders, the punishment of dismissal from service was harsh and was not called for. In **Syed Zaheer Husain**[3], while examining the quantum of punishment imposed on an employee for unauthorized absence from duty for a period of one week prior to his being placed under suspension, the Supreme Court held that the punishment of dismissal from service was too harsh and was required to be substituted by an appropriate lesser punishment. The Supreme Court directed reinstatement of the employee with continuity of service and all other benefits except withdrawing 50% of back wages from the date of dismissal till the order of the Supreme Court (i.e., for a period of nearly 10 years.)

In **Mohinder Singh**[27], a Constable in the Punjab armed police had remained absent from duty for 5 ½ months without sanction of leave and without prior intimation. His termination from service was challenged on the ground that a single act of remaining absent from duty without sanction of leave did not merit an order of dismissal from service. On examining the records and on finding that the said constable had remained absent from duty without sanction of leave on 15 different occasions, the Apex Court held that the constable, being a member of the disciplined force, could not be permitted to remain absent without taking leave for such a long period.

In **Mohd. Ayub Naz**[28], the single judge of the Rajasthan High Court had recorded a finding that the delinquent employee had remained absent for about three years and that there was no

satisfactory explanation to justify his absence. The learned judge however reduced the punishment of removal to that of compulsory retirement with consequential retiral benefits. This order was confirmed by the Division Bench of the Rajasthan High Court. The Supreme Court held that a Government servant, who had willfully been absent for a period of about three years, had no right to receive the monetary/retiral benefits during the period in question and that the punishment of removal from service imposed on him by the Government was justified.

In **R.K. Shewaramani**[13], a medical representative, on his transfer from Delhi to Eluru in Andhra Pradesh, remained unauthorisedly absent from duty in excess of 30 days. The applicable rules had been amended providing for termination of the services of an employee if he remained unauthorisedly absent for 30 days or more. The contention, that the amendment would not apply, was rejected by the Supreme Court. In **Delhi Transport Corporation**[29], unauthorised absence from duty of conductors in the Delhi Transport Corporation, for periods ranging from 45 days to 294 days, was in issue. The entire period of absence was without sanction of leave and while this fact was not in dispute it was contended, on behalf of the conductors that they had applied for leave. It is in such circumstances that the Supreme Court, while holding that mere making of an application after or even before absence from work did not in any way assist the employee concerned, held that when an employee absents from duty without sanctioned leave for a long period it *prima facie* showed lack of interest in work.

In **Md.Jahangir v. Dy. Chief Security Commissioner,**

Railway Protection Force, South Central Railway, Secunderabad[31], a Naik in the Railway Protection Force was issued charge sheet for unauthorized absence of 35 days and was imposed punishment of dismissal from service. This Court examined the facts of the case and found justifiable reasons for his absence since he was suffering from jaundice and under such circumstances held that imposition of capital punishment of dismissal was harsh and unconscionable. This Court directed the petitioner to be reinstated into service, but without back wages and left it open to the disciplinary authority to impose an appropriate minor punishment. In appeal, (W.A.1659/2000 dated 13.11.2000), the Division bench of this Court confirmed the order, passed in W.P.No. 1866 of 1998 dated 02.11.2000, holding that since the learned single judge had pointed out that the grounds on which the delinquent employee had absented himself without informing the employer was found to be real, and since the punishment imposed was totally disproportionate and shocked the conscience of the Court, no interference was called for against the discretionary order of the learned single judge. In **M. Krishnam Raju**[5], this Court held that since absence from duty without cause was only for 29 days it must be treated as absence on account of sickness, since the employee had produced a medical certificate in support of his sickness. This Court held that the fact that there were medical certificates, for the entire period of absence, had been ignored by the enquiry officer and the order of punishment was therefore vitiated. In **M.S.N. Prasad**[30], the delinquent employee had left headquarters to attend his sister's daughter's marriage without obtaining permission. For this charge and two others he

was imposed the punishment of withholding of increments for three years. This Court held the other two charges as not proved and observed that the punishment imposed for leaving headquarters without permission, in the facts and circumstances of that case, deserved lesser punishment. The matter was remitted back to the disciplinary authority for imposition of a lesser punishment. In **K. Rambabu**[8], the delinquent left headquarters without permission and was unauthorisedly absent for a period of 25 days prior to his suspension. This Court held that the period prior to suspension was alone required to be taken into consideration and not thereafter since once an employee was placed under suspension, the question of his being treated as unauthorisedly absent did not arise. This Court held that unauthorised absence or leaving headquarters would only fall under Rule 146.2 ie neglect of duty and could not be treated as a serious misconduct falling under Rule 146.3 or 146.8 and that the punishment of compulsory retirement was a wholly unconscionable punishment unrelated to the gravity of the misconduct. This Court held that since various types of misconducts are notified in the rules with reference to the gravity of the misconduct, the punishments should also vary with the punishments enumerated and that awarding higher punishment under major misconduct, for neglect of duty, was wholly arbitrary and unreasonable. I n **K. Balanagi Reddy**[6], unauthorised absence from duty was held to be for one day and not one week as referred to in the charge sheet and consequently this Court held that the punishment imposed of removal from service was grossly disproportionate. In **D. Ramulu**[7], unauthorised absence from duty initially for a period of one week

and thereafter for 20 days resulted in the delinquent employee being imposed the punishment of removal from service. This Court held that the said punishment was shockingly disproportionate and modified the punishment to one of reinstatement into service, without back wages and without attendant benefits, but with continuity of service only for the purpose of computation of retiral benefits.

In **Ch. Sai Babu**[17], the petitioner was charged for chit chatting while on night duty, to have been found hearing cricket commentary, to have deserted his duty point and later found at his quarters, to have failed to note down particulars of seal loads and to have lodged a false complaint through his wife on the Sub-inspector. The learned Single Judge took note of the fact that the petitioner was a habitual offender and due to dereliction of duties, punishment of stoppage of increments for three years was ordered earlier in the year 1984, but there was no improvement in his conduct. The learned single judge, however, held that the present charges were not so serious warranting extreme punishment of removal and directed that punishment of stoppage of four increments with cumulative effect be awarded and the petitioner be reinstated into service with continuity of service, but without back wages. In appeal, (W.A.No.952/98 dated 3.2.2005), the Division bench set aside the order passed in W.P.No. 17450 of 1992 dated 13.02.1998 holding that it was not open for this Court to interfere with the quantum of punishment unless it was disproportionate or shocked the conscience of the Court. The charges leveled against the delinquent employee in **Ch. Sai Babu**[17] was not of unauthorized absence and as such the judgment may not have a

direct bearing on the facts of the present case.

As noted above, Rule 147(vi) of the Railway Protection Rules renders a member of the Railway Protection Force liable for punishment for absenting himself without proper intimation or without sufficient cause over staying the leave granted to him. Under Rule 156(b)(iii) it is open to the disciplinary authority, with a view to ensuring maintenance of integrity in the Railway Protection Force, to consider awarding punishment of removal from service, on a member of the Railway Protection Force, for absence from duty without proper intimation or over staying beyond the sanctioned leave without sufficient cause. Since the punishment of removal from service is one which the disciplinary authority was entitled to impose under the Rules, it cannot be said to be a punishment which could not have been imposed at all on the delinquent employee.

Is the punishment imposed on the petitioner, of removal from service, one which is grossly disproportionate or so irrational as to shock the conscience of this Court? While examining this aspect, it is necessary to bear in mind Rule 155, whereunder it is essential for the disciplinary authority to impose punishment keeping in view the nature of duties expected from the member of the force and the misconduct committed by him. Further, under rule 147(vi) and 156(b)(iii), absence from duty must be without sufficient cause. It is in this context that the facts of the present case are require to be examined.

The charges leveled against the petitioner and the statement of allegations, read as under:

"Constable M. Gopala Krishna No. 220 working in Adoni Out-post (Under suspension) is hereby charged for serious misconduct and gross dereliction of duty in that on 01.10.1994 he left his headquarters without

obtaining permission from his superiors and thereby remained absent unauthorisedly from 02.10.1994 till date without any authority or intimation. He was also involved in Cr.No. 59/94 u/s 302, 498-A, 201 IPC registered by Local Police, Cuddapah being arrested on 22.10.1994. Thus he has not conducted himself properly and brought discredit to the reputation of the Force by violating Rule No. 146.4 & 147(vi) of RPF Rules 1987. Hence the charge.

Statement of Allegation:

"M. Gopala Krishna is working as a RPF Constable No. 220 in Adoni RPF Out-post since 05.03.1992. On 01.10.94 he left his head-quarters without obtaining any permission from his incharge. He was due for duty from 14/00 to 22/00 hrs shift on 2.10.94 but he did not turn-up and remained absent unauthorisedly from 2.10.94 till date without any authority or intimation to any one of his superiors. A case in Cr.No. 59/94 u/s 304, 498(A) and 201 IPC was registered against him by Local Police, Cuddapah for criminal Act with his subsequent arrest on 22.10.1994. Being a member in the Armed Force, he has not conducted properly and brought discredit to the reputation of the Force and thus violated Rule No. 146.4 & 147 (v) of RPF Rules 1987. Hence the charge."

It is not in dispute that the petitioner herein completed his night duty on 30.9.1994/01.10.1994 and was required to report for duty only at 2.00 p.m. on 2.10.1994 to work in the shift from 14.00 hours to 22.00 hours. According to the petitioner on 1.10.1994 while he was at Adoni, he received a letter from his parents informing him that his wife had picked up a quarrel with them to shift the family to Adoni and that she was attacked by evil spirits, (Possibly a case of acute depression or a neurotic disorder), and it is under such unavoidable circumstances that he had failed to take proper permission from the incharge to leave headquarters to go to Cuddapah to sort out the problem. It is his case that he left head quarters at Adoni and went to Cuddapah by 6063 Express with the intention of coming back by 6009 Mail to enable him to report to duty for the 14.00 to 22.00 hours shift on 2.10.1994. However, his wife committed suicide, along with their daughter, on the

intervening night of 1st/2nd October 1994. Petitioner came to Guntakal Railway Station and at his request the security control informed the Sub-inspector of the Railway Protection Force of Adoni on 02.10.1994 at 5.30 A.M. and in proof thereof an entry was admittedly made by P.W.1 –the Sub-Inspector, Railway Protection Force.

It is the petitioner's case that, on 2.10.1994, due to the false information given by the neighbours, the local police took him, and his parents, into custody resulting in his remaining absent from duty from 2.10.1994, that his arrest on 2.10.1994 received wide publicity in Eenadu newspaper, and though he was arrested on 2.10.1994, the local police had shown his arrest only 20 days thereafter on 22.10.1994. Petitioner would refer to the evidence of Sri K.Husainappa (P.W.1), S.I. Railway Protection Force at Adoni, who during cross-examination admitted that on 2.10.1994 at 05-30 hours he had received a message from the security control stating that the petitioner's wife had expired and that on being informed by the constable No.085 he had made a diary entry in D.D.E.No.32 of AD.OP 2-10-1994 at 21-45 hours that the petitioner herein was arrested by the local police.

The petitioner was placed under suspension on 12.10.1994 and on 22.10.1994, on his being produced before the Magistrate, he was remanded to judicial custody and he remained in the Central prison, Cuddapah for about 3 months. In fact the disciplinary enquiry was held against the petitioner, while he was in judicial custody, in the Central Prison, Cuddapah.

On the basis of the complaint by the petitioner's father in law, the petitioner was charged of having killed his wife and infant child and criminal proceedings were instituted against him. In the

disciplinary proceedings initiated against him, the petitioner was charged of dereliction of duty for having left his headquarters without obtaining permission from his superiors on 01.10.1994 and remaining absent unauthorizedly from 2.10.1994 without authority or intimation and for his involvement in Crime No.59/94 under Sections 302, 498-A and 304-B I.P.C. registered by the local police followed by his arrest on 22.10.1994. The petitioner was charged of having not conducted himself properly and for having brought discredit to the reputation of the force by violating Rules 146.4 and 147(vi) of the Railway Protection Force Rules, 1987.

The enquiry officer, while summarizing the evidence in his enquiry report, has merely referred to the examination in chief of Sri K. Hussainappa, P.W.1 and does not make any reference to his admission, in cross-examination, that on 2.10.1994 at 05.30 hours he had received a message from the Security Control at Guntakal that the petitioner's wife had expired and that he had made an entry at 21.45 hours on 02.10.1994 that the petitioner was arrested by the local police, though these facts were specifically referred to by the petitioner in his final statement. While the enquiry officer takes note of the fact that the petitioner herein had submitted a final statement, this part of the final statement is not referred to in the enquiry report.

The Disciplinary authority, in his order dated 20.1.1995, agreed with the findings of the enquiry officer and held that leaving head quarters without obtaining permission and absenting from duty was an act of serious indiscipline in the armed forces, that the petitioner was involved in a criminal case and was in judicial custody for three months and that, being a member of the armed forces, he had not conducted himself properly and had brought

discredit to the reputation of the force. The disciplinary authority held that there cannot be any place in the disciplined force for a member who had indulged in indisciplined acts and serious misconduct and as the charge against the petitioner was serious in nature, involving moral turpitude, he was not a person fit to be retained in service and therefore was being removed from service.

The appellate authority, in his order dated 16.4.1996, held that the petitioner had left head quarters without permission and had casually informed the S.I. of the Railway Protection Force of his wife's committing suicide but did not request for leave nor send a telegram or a leave application nor was post facto sanction of leave accorded. The appellate authority held that the petitioner was involved in the murder of his wife and daughter and was in judicial custody for three months. The appellate authority took note of the petitioner's admission that he had been arrested by the local police, along with his parents, on 2.10.1994 on the basis of a complaint to the police on the same day at 14.00 hours, that a news item was published in the local daily and that Crime No.59/94 was registered against him. The appellate authority held that the charge against the petitioner was of unauthorized absence from 2.10.1994 and for involvement in a criminal offence of moral turpitude, that this was a case wherein a member of the disciplined force, who was supposed to maintain strict discipline and set an example to others, had grossly violated the code of conduct and had indulged in the heinous crime of murder of not only his wife but also his child and had also remained authorizedly absent. The appellate authority held that the petitioner deserved no sympathy whatsoever and therefore rejected the appeal.

The revisional authority, in his order dated 5th/6th January 1999, held that the petitioner was absent from duty from 2.10.1994, was arrested by the local police on 22.10.1994, and that his contention that he was kept in illegal custody by the police for 20 days was not tenable. While holding that his absence from the date of his arrest was on record, but his unauthorized absence from 2.10.1994 to 22.10.1994 and leaving head quarters without permission clearly went against him, the Revisional authority held that the petitioner's involvement in a criminal case of the death of his wife and child by burning irrespective of acquittal had brought discredit to the reputation of the Force and his leaving headquarters and his whereabouts not being known for 20 days while the criminal case was pending against him was certainly a discreditable indisciplined act bringing disrepute to the Railway Protection force. The Revisional Authority saw no reason to interfere with the punishment and rejected the revision.

All the authorities concerned were of the view that the petitioner had indulged in the heinous crime of killing his wife and child and burning them to death.

In S.C.No. 80 of 1995 P.W-1, the father-in-law of the petitioner, and the defacto-complainant and his wife (P.W-2 and the petitioner's mother-in-law) deposed that their daughter had died at the residence of the accused in a fire accident, that during her life time she was looked after by the accused affectionately and that she never complained against the petitioner to the effect that he had harassed her physically or mentally. They stated that they had no suspicion against the accused in connection with the deceased and that they came to know of the fire accident only

through the 2nd accused who came and informed them that their daughter had accidentally caught fire while she was preparing food at which time her ten months baby was also present. Both of them were engulfed in flames resulting in their death. Both these witnesses (P.W-1 and P.W-2) were declared hostile and were cross-examined. However no incriminating material was elicited from them with regards the ill treatment and harassment of the deceased. The neighbours, P.Ws: 3 to 6, also stated that they did not observe any harassment of the deceased by the petitioner. They were also declared hostile by the learned Additional Public Prosecutor.

The learned Sessions Judge, by order in S.C.No. 80 of 1995 dated 20.07.1996, held that since there was no incriminating evidence against the accused in the evidence of the prosecution witnesses, that on scanning the entire evidence adduced on behalf of the prosecution there was no incriminating material for basing a conviction against the accused and that the prosecution had miserably failed to bring home the guilt of the accused beyond reasonable doubt, the accused were entitled for acquittal under Section 232 Cr.P.C. The petitioner, and the other accused, were found not guilty of the offence punishable under Section 498-A and Section 304-B IPC and were acquitted under Section 232 Cr.P.C.

As is clear from the judgment of the criminal court, in S.C.No. 80 of 1995 dated 20.07.1996, the petitioner's father-in-law, who had initially given the complaint, himself retracted the statement and deposed that the petitioner was not guilty. While the Enquiry officer's report and the orders of both the disciplinary and appellate authorities was prior to the acquittal in the criminal case, the order of the revisional authority was subsequent thereto

and the order passed by him on 5/6.01.1999 was on the order of acquittal of the criminal Court being brought to his notice. Since the petitioner was not charged of the misconduct of killing his wife and child nor was a departmental enquiry held in this regard, the order of the Sessions Judge in S.C.No. 80 of 1995 dated 20.07.1996 acquitting him of this charge could not have been brushed aside by the revisional authority and his conclusion, that the petitioner's involvement in the criminal case of the death of his wife and child by burning, irrespective of his acquittal in the criminal case, had brought discredit to the railway protection force, is perverse. Since the petitioner has been acquitted by a competent criminal Court of this charge and since he has not even been charged departmentally of having killed his wife and child, let alone a departmental enquiry being held in this regard, the petitioner cannot be said to have been involved in the killing of his wife and child and in their being burnt to death.

While the petitioner contended that he was arrested on 2.10.1994, (which fact is stated to have been widely reported in the local press and to have been recorded by P.W.1 himself on 02.10.1994 at 21.45 hours), and that he was kept in illegal custody for 20 days till his arrest was shown on 22.10.1994, the enquiry officer and the disciplinary authority did not take into consideration these material facts. The appellate authority put this fact, of the petitioner having been arrested on 2.10.1994, against him holding that he had indulged in a heinous crime of murder of not only his wife but also his child. The revisional authority, while rejecting this contention of the petitioner that he was arrested on 2.10.1994 as not tenable, did not assign any reason as to why the petitioner's contention in this regard should be disbelieved. All the authorities

were swayed away by the feeling that the petitioner had burnt his wife and small child to death, while the order of the Sessions Judge, in S.C.80/95 dated 20.7.1996, establishes that his wife had committed suicide along with their small child.

Since the charge of misconduct, of the petitioner being involved in a criminal case has been set aside, the only question is with regards the punishment to be imposed for leaving head quarters without permission and for remaining absent unauthorisedly from 2.10.1994. As referred to above, both under Rule 147(4) and 156(b)(iii), absence from duty "**without sufficient cause**" alone is a misconduct. On the aforesaid facts, can it be held that the petitioner's leaving headquarters without permission and remaining unauthorisedly absent from duty was without sufficient cause? The answer must necessarily be in the negative. No person, on being informed of his wife's acute depression, (according to the petitioner she was attacked by evil spirits), would be in any frame of mind to seek written permission for leaving head quarters. It is the petitioner's case that he left Adoni for Cuddapah on 1.10.1994 with the intention of coming back to duty the next day afternoon. In the meanwhile his wife committed suicide on the intervening night of 1st/2nd October, 1994. Even if the revisional authority's finding, that the petitioner's contention of his being arrested on 2.10.1994 was not tenable, were to be accepted, (though such a contention has been arrived at without assigning reasons and without taking note of the petitioner's contention of his arrest on 02.10.1994 being widely reported in the newspapers and that P.W.1 had himself recorded in his diary of having received information on 02.10.1994 at 21.45

hours regarding the petitioner having been arrested), would any person whose wife had committed suicide and had burnt herself to death along with their small child, and who was arrested on the charge of having murdered them, be in any frame of mind to seek written permission for his unauthorized absence? Can it be said that his leaving headquarters without permission and remaining unauthorisedly absent from duty was, in the aforesaid circumstances, without sufficient cause?

As noted above, while examining the contention as to whether the punishment imposed is irrational, courts must examine whether the competent authority has left out relevant factors or has taken into account irrelevant factors. The relevant factors of the petitioner's arrest on 2.10.1994 being widely reported in the news papers and of P.W.1 having recorded in his diary that he was informed at 21.45 hours on 2.10.1994 itself of the petitioner's arrest as also the fact that the petitioner had informed security control at Guntakal, who in turn had informed the S.I. Railway Protection Force, Adoni (P.W.1) of the petitioner's wife having committed suicide, have not been taken into consideration by the enquiry officer, the disciplinary and the appellate authority, all of whom were swayed by the allegation and were of the firm view that the petitioner had committed the heinous crime of murdering his wife and small child, burning them to death. Though the petitioner's acquittal by the Sessions Judge, in S.C.80/95 dated 20.7.1996, was brought to the notice of the revisional authority, he nonetheless held that his very involvement in the criminal case had brought disrepute to the Railway Protection Force.

While it is no doubt true that, under the rules, the petitioner

was required to obtain permission for leaving headquarters and to obtain leave of absence, and that his leaving head quarters without permission, and remaining unauthorisedly absent from duty, is a misconduct, it must be borne in mind that under Rule 156(b)(iii) the punishment of removal from service can be imposed only for absence from duty without sufficient cause. In the aforesaid facts and circumstances of the present case, the punishment of removal from service is grossly disproportionate, irrational, in defiance of logic and moral standards and a punishment which shocks the conscience of the Court. The impugned order of punishment of removal from service is therefore set aside.

It cannot however be ignored that members of the Railway Protection Force are required to maintain discipline of a very high order. The petitioner cannot, therefore, totally absolve himself of all blame for leaving headquarter without permission and of remaining unauthorisedly absent from duty whether it is for a day i.e., on 2.10.1994, (if the petitioner's contention of his being arrested at 2.00 p.m. on that day were to be believed), or 20 days from 2.10.1994 to 22.10.1994. (if the revisional authority's finding that he was arrested only on 22.10.1994 and not on 2.10.1994 were to be accepted). Ends of justice would be met if the matter is remitted back and the disciplinary authority is directed to take an appropriate decision regarding the appropriate punishment to be imposed on the petitioner, for the proved misconduct of leaving headquarters without permission and for remaining unauthorisedly absent from duty, in the light of the observations made in this order.

The writ petition is accordingly disposed of. However, in the circumstances, without costs.

Date: .07.2006 RAMESH RANGANATHAN, J

Note: L.R. copy to be marked
B/o
MRKR/ASP

[1] AIR 1999 SC 1416

[2] 2001(4) ALD 535 (DB)

[3] AIR 1999 SC 3367

[4] AIR 1994 SC 215

[5] 1995(1) ALT 744

[6] 2002(3) ALT 422

[7] Judgment in W.P.No. 6021 of 1999 dated 08.07.2005

[8] Judgment in W.P. No. 20448 of 1997, dated 20.06.2000

[9] Judgment in W.A.No. 1659 of 2000 dated 13.11.2002

[10] 2005(6) Supreme 612

[11] 2005(7) Supreme 111

[12] 2005(6) Supreme 183

[13] 2005(6) SCC 76

[14] 2006(2) Supreme 369

[15] 2006(1) Supreme 633

[16] Judgment in W.P.No. 18217 of 2004 dated 05.11.2004

[17] W.A.No. 952 of 1998 dated 03.02.2005

[18] AIR 1963 SC 779

[19] AIR 1969 SC 966

[20] AIR 1996 SC 484

[21] 1997(7) SCC 463

[22] (2001) 2 SCC 386

[23] 2004(8) SCC 218

[24] (2006) 3 SCC 790

[25] (2005) 10 SCC 84

[26] (2006) 2 SCC 255

[27] (2005) 12 SCC 182

[28] (2006) 1 SCC 589

[29] (2004) 7 SCC 574

[30] Judgment in W.P.29705 of 1999 dated 26.11.1999

[31] judgment in W.P.No.18660 of 1998 dated 2.11.2000